IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7483 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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YUSUF IBRAHIM HAFEJI

Versus

DIVISIONAL CONTROLLER

Appearance:

1. Special Civil Application No. 7483 of 1994

MR JS BRAHMBHATT for Petitioner No. 1

MR YN RAVANI for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 03/04/2002

ORAL JUDGEMENT

Heard learned advocate Mr.Brahmbhatt for the petitioner workman and Mr. Ravani for the respondent corporation. By way of this petition, the petitioner has challenged the award made by the tribunal in Reference IT

NO. 137 of 1990 dated 14th June, 1993 whereby the tribunal has rejected the reference. At the relevant time, the petitioner was working as conductor and he was punished by the competent authority by imposing punishment of lowering down to five stages by order dated 18th September, 1989 for the misconduct committed by the workman dated 30th April, 1987.

Learned advocate Mr. Brahmbhatt for the petitioner has submitted that the present petitioner was working as a conductor and on 30th April, 1987 when he was on duty, at that time, his bus was checked and total 12 passengers were found without tickets upto the checking point; no fare was collected and from 12 passengers were having luggage of 200 kg. but luggage ticket was not issued nor fare for such luggage was recovered by the petitioner. In another case, one passenger travelling in the bus from Jumbusar was having 80 kg. luggage with him from whom ticket fare and luggage charges were not collected; way bill was not closed by the petitioner. On that basis, the petitioner was served with a chargesheet and thereafter departmental inquiry was initiated wherein ultimately order of punishment dated 18th September, 1989 has been passed lowering down him to five stages reducing basic salary from Rs.470.00 to 335.00. Learned advocate Mr. Brahmbhatt has submitted that the defence of the petitioner was to the effect that the petitioner was not able to issue ticket because the passengers were high headed persons. The said defence was accepted by the reporter in his evidence that while paying fine, three passengers were not agree to pay the fine and he also submitted that the tribunal has committed error in coming to the conclusion that this fact has not been noted by the concerned conductor in way bill. He submitted that the tribunal has also committed error in not believing the case of the petitioner. He has submitted that the explanation given by the petitioner Exh. 10 was to the effect that when the bus was checked, it was 25 minutes late and it was the first day of Ramzan and therefore, there was some disturbance from the passengers and the bus was started by doing the road booking and due to non cooperation from the passengers, he was not able to issue the tickets in time and therefore, the passengers were found without ticket when the bus was checked and the way bill was open and in view of these facts, punishment of lowering down to five stages with permanent effect is excessive and harsh punishment and even if it is considered that there was some negligence on the part of the workman, then, some minor punishment is required to be imposed against the petitioner.

Learned advocate Mr. Ravani appearing for the corporation has submitted that the tribunal was right in appreciating the evidence on record and was also right in rejecting the reference. The tribunal was also right in not believing the defence of the petitioner who has failed to collect fare from the passengers and to issue tickets to certain passengers. According to him, such misconduct will cause loss to the corporation which is a public body and, therefore,this court should not interfere with the award of the tribunal.

I have considered the submissions made by the learned advocates for the parties. After considering the observations made by the tribunal, according to my opinion, in the facts and circumstances of the present case, the tribunal has committed an error in not believing the defence of the petitioner. According to my opinion, the tribunal ought to have appreciated the evidence of the reporter who has stated that the bus was late by 25 minutes and it was the first day of Ramzan and there was some non cooperation from the passengers. Another aspect ought to have been appreciated by the tribunal was that the way bill was open and therefore there was no intention on the part of the petitioner to misappropriate the amount of fare of the corporation. Therefore, in view of these two aspects of the matter, according to my opinion, the punishment of lowering down the petitioner to five stages from basic salary of Rs.470.00 to Rs.335.00 is having recurring effect which may run in thousands of rupees during the service and is also having effect on the retirement benefits of the petitioner. According to my opinion, the tribunal ought to have appreciated these aspects. The tribunal has, therefore, erred in rejecting the reference. Considering some negligence on the part of the petitioner, according to my opinion, punishment of stoppage of two increments with permanent effect will met ends of justice.

For the reasons recorded hereinabove, this petition is partly allowed. The award dated 14.6.1990 made by the tribunal in Reference IT No. 137 of 1990 is hereby modified to the effect that the punishment of lowering down the petitioner to five stages from Rs.470.00 to Rs.335.00 imposed upon the petitioner by the corporation is hereby substituted by the punishment of stoppage of two annual increments with permanent effect. The Corporation is, thus, directed to impose punishment of stoppage of two annual increments with future effect instead of aforesaid punishment which was imposed by it upon the petitioner. It is directed to the ST Corporation to pay all the difference and arrears of

salary because of the present modification to the petitioner workman within period of two months from the date of receiving the copy of this order. To that extent, the aforesaid reference shall stand allowed. Rule is made absolute in terms indicated hereinabove with no order as to costs.

3.4.2002. (H.K. Rathod,J.)

Vyas